IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 28/2001

Mr.Ramnath P. Desai,
Assistant Teacher,
Shri Shantadurga High School,
Bicholim, Goa ..... Petitioner.

V/s.

1. State of Goa,
through the Secretary (Education),
with his office at the Secretariat,
Panjim, Goa.

2. The Director of Education,
Government of Goa,
with his office at St. Inez,
Panjim, Goa.

3. The Chairman,
Manging Committee,
`Shri Shantadurga High School'
Bicholim, Goa. ..... Respondents.

Mr. S.D. Lotlikar, Sr. Advocate with Mr. R. Sardessai, Advocate for the petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Mr. P.A. Kamat, Govt. Advocate for respondents No.1 and 2.

Mr. S.S. Kantak, Advocate for respondent No.3.

CORAM : P.V. HARDAS &
N.A. BRITTO, JJ.

DATE : AUGUST 16, 2004.

ORAL JUDGMENT : (Per HARDAS, J.)

This petition under Article 226 of the Constitution has been filed, principally seeking for the issuance of a writ of mandamus commanding the respondents to allow the petitioner to continue in service by accepting his withdrawal of his option to take benefit under the Voluntary Retirement Scheme and to reinstate the petitioner in service with full back wages and allow him to continue in service until he attains the age of superannuation. This petition came to be admitted by this Court on 31st January, 2001. However, no interim stay was granted to the petitioner.

2. The facts, in brief, as are necessary to the decision of the petition, can be stated thus :

The petitioner was working as an Assistant Teacher in the "Shri Shantadurga High School," Bicholim-Goa. The said School, where the petitioner was working, is an aided school. By an Office Memorandum dated 15.5.2000, the Government introduced a Voluntary Retirement Scheme, hereinafter, referred to as "VRS", for the sake of brevity, on the terms and conditions set out in the said Office Memorandum. By virtue of this Office Memorandum, an employee who had completed 10 years' of qualifying service was allowed to seek voluntary retirement by a written request to the Appointing Authority. The scheme further provided that acceptance or refusal of an application for VRS made by an employee to

the Appointing Authority would be examined and recommended accordingly by a Committee comprising of the respective Heads of Department, the Secretary and the Minister concerned. The other clauses related to the terminal benefits which would be payable to an employee seeking voluntary retirement. By an Office Memorandum dated 15.8.2000, the Government modified the earlier Office Memorandum dated 20th June, 2000 to the extent that the required notice period would be governed as per Clause 48-A of CCS Pension Rules instead of Clause 48-A(1) of Central Civil Service Pension Rules. The Office Memorandum further clarified that all applications received so far would be treated accordingly. The VRS , when it was first introduced, was effective from 15th May, 2000 till 15th August, 2000 and thereafter, by an Office Memorandum it was extended till 30th September, 2000. By an Office Memorandum dated 29.9.2000, the VRS was further extended till 31st October, 2000.

3. The petitioner, in pursuance of the VRS introduced by the Government, submitted his application dated 4/10/2000, opting to take voluntary retirement under the said Scheme. By the said letter dated 4.10.2000, the petitioner stated that he was giving three months' notice with a request to relieve him from service w.e.f. 4/1/2001 and with a further request to give him all benefits to which he was entitled. By an Office Memorandum dated 18.8.2000, it was brought to the notice of all the employees that the applications for voluntary retirement would be

subject to acceptance by the Competent Authority and as per the Scheme. The Office Memorandum further stated that it was only thereafter that the concerned officer/official would be allowed to proceed on voluntary retirement as per the date mentioned. By an Office Memorandum dated 7.11.2000, it was brought to the notice that many employees were opting for the VRS and seeking retirement from a date which was well beyond three months from the date of application. By this Office Memorandum, it was stated that the notice period could not be extended beyond three months with the exception of employees desiring that the pension should commence from the first of the month and where relieving an employee after three months' period from the date of application was absolutely necessary in public interest, it was clarified that this would apply in case of teachers, wherein the date of retirement should coincide with the end of the current academic session. The Department was directed to ensure that the decision on the application was taken within a period of three months from the date of the application. By virtue of an Office Memorandum dated December, 2000, the benefit extended to the teachers to coincide their retirement with the end of the academic session, was also extended to the non-teaching staff of the schools and colleges and schools/colleges were given the discretion of retaining the staff till 30th April, 2000.

4. The Dy. Director of Education, by his letter dated 15.11.2000 informed the Manager of respondent No.3-School that the application of

the petitioner had been approved and the Department had no objection in acceptance of the petitioner's application for VRS. An approval was also extended for relieving the petitioner at the end of the academic year i.e. 30th April, 20001, in public interest and in order to avoid hardships to the students. Respondent No.3-School, by its communication dated 13.1.2001 informed the petitioner that his application dated 4.10.2000 opting for VRS was accepted by the Management and the petitioner would be relieved w.e.f. 31.1.2001. The petitioner reacted to this letter by issuance of a letter dated 18.1.2001 addressed to respondent No.3 withdrawing his application dated 4.10.2000 with a request to allow him to continue in service w.e.f. 1.2.2001. By his further letter, which was received by respondent No.3 on 20/1/2001, the petitioner sought for deletion of the date `1/2/2001' with a request to permit him to continue to discharge his duties. Respondent No.3 by letter dated 22.1.2001 informed the petitioner that he had been orally informed twice to sign forms for the pension and was, therefore, asked to contact the Head Clerk in that behalf.

5. Respondents No.1 and 2 have filed an affidavit of the Director of Education, Government of Goa, dated 31st January, 2001, opposing the reliefs prayed for by the petitioner. In the said affidavit, it is stated that the scheme provided that on receipt of an application for retirement, the Appointing Authority is expected to place the application before a Committee comprising of the Director of Education, Education Secretary

and the Minister of Education and the Appointment Authority is expected to act in accordance with the recommendations made by the Committee. Reliance is placed on Rule 48-A of the CCS Pension Rules, particularly sub-Rule (4) which precluded a Government Servant having once elected to retire, to withdraw his notice, except with the specific approval of such Authority and provided also that the request for withdrawal is made before the intended date of his retirement. In para 14 of the affidavit, it is stated that the Department by its letter dated 15th November, 2000 had accepted the offer of the petitioner for voluntary retirement made by his letter dated 4th October, 2000 and it would not be open for the petitioner to withdraw his offer on 18th January, 2001, particularly as his offer stood accepted even by respondent No.3 which was communicated to him by letter of respondent No.3 dated 13.1.2001. It is then stated in para 15 of the affidavit that an application for withdrawal of his offer of voluntary retirement ought to have been made by the petitioner on or before 4th January, 2001 which was the effective date of retirement as per the scheme and as per the Rules. In para 17 of the affidavit, it is stated that the request of the petitioner by his letter dated 4.10.2000 was accepted within the prescribed notice period of three months. In para 18 of the affidavit, it is stated that the request of the petitioner opting for premature retirement was accepted unconditionally and unequivocally and only a date was stipulated on which he would be relieved and this was done with a view to lessen the inconvenience which would be caused to the students and the school

administration.

6. The petitioner has submitted that by his letter dated 4.10.2000 he had opted to retire with effect from 4.1.2001 and since the third respondent had not accepted the petitioner's application for retirement prior to 4.1.2001 and also as the petitioner was not relieved from service, his application could not have been accepted by respondent No.3 beyond 4.1.2001. It is also urged by the petitioner that since he continued in service as an employee of the School after 4.1.2001, the notice of retirement became ineffective and his application should not have been accepted by respondent No.3 on 13.1.2001. It is also urged that as the Education Department had recommended that the petitioner be continued in service until 30th April, 2001, the action of the management in seeking to relieve the petitioner on 31.1.2001 was neither in accordance with the recommendations of the Directorate of Education, nor was it in consonance with the request of the petitioner to retire him from 4.1.2001 and, therefore, the petitioner was not precluded in withdrawing his offer on 18.1.2001.

7. We have heard Mr. S.D. Lotlikar, learned Senior Counsel on behalf of the petitioner in support of the contentions raised by the petitioner in this petition and which are reproduced by us above.

8. Mr. Lotlikar, learned Senior Counsel on behalf of the petitioner

has placed reliance on the Judgment of the Supreme Court in ***Balram Gupta v. Union of India and another,*** AIR 1987 SC 2354. In this case, the appellant before the Supreme Court, having completed 22 years' of service, by his letter dated 24.12.1980 sought voluntary retirement on 31.3.1981. By virtue of the said letter, he requested the Appointing Authority to treat the notice period of three months w.e.f. 1.1.1981. By a letter dated 20.1.1981, the appellant therein was allowed to retire voluntarily w.e.f. 31.3.1981. By his letter dated 31.1.1981, the appellant withdraw his notice. However, the appellant was relieved by an order dated 31.3.1981. In this background, the Supreme Court, therefore, held that the dissolution of the contract would be brought about only on the date indicated, i.e. 31st March, 1981 and upto that date, the appellant was a Government employee and was at liberty and entitled, independently without sub-Rule (4) of Rule 48-A of the Pension Rules, to withdraw his notice of voluntary retirement.

9. Mr. Lotlikar then placed reliance on the Judgment of the Supreme Court in ***Shambhu Murari Sinha vs. Project and Development India and another,*** 2000 AIR SCW 2577. The Supreme Court, relying on its earlier Judgment in ***Balram Gupta v. Union of India and another (supra)*** held that an employee could withdraw though the resignation was accepted and the withdrawal could be made before the acceptance is made effective by relieving the employee from service. In this case, the option of voluntary retirement made by the

appellant by his letter dated 18.10.1995, was accepted by the respondent-Management by its letter dated 30th July, 1997, but the appellant was not relieved from service and he was allowed to continue in service till 26/9/1997, which, for all practical purposes, would be the "effective date" and in the meantime, the appellant had withdrawn the offer of voluntary retirement by his letter dated 7.8.1997. In that background, therefore, the Supreme Court directed that the appellant shall be allowed to continue in service with all consequential benefits.

10. Similarly, the Supreme Court in ***J.N. Srivastava v. Union of India and anr.,*** AIR 1999 SC 1571, has held that though the notice might have been accepted by the employer, the employee had locus standi to withdraw his proposal before the date of retirement is reached.

11. Reliance is also placed by Mr. Lotlikar, learned Senior Counsel on the decision of the Supreme Court in ***K.L.E. Society vs. Dr. R.R. Patil and anr.,*** (2002) 5 SCC 278. The Supreme Court, in the aforesaid Judgment, has held that the retirement could become effective after expiry of the period of notice i.e. 3 months. Since the employee was continued beyond the period of three months, the first notice, by the conduct of the management, was treated as infructuous and inoperative. The employee then submitted a second notice on 5.7.1995. The Management considered the second notice as continuation of the earlier notice for the purpose of calculating the notice period and accepted the

employee's request for voluntary retirement curtailing the notice period of three months. In the background, therefore, the Supreme Court dismissed the appeal filed by the Management.

12. We have heard learned Advocate General on behalf of respondents No.1 and 2, who has submitted that Scheme of voluntary retirement was a close end scheme, introduced by the Government as a funding agency. According to the learned Advocate General, the request for voluntary retirement of the petitioner was accepted by respondents No.1 and 2 in November, 2000 and the same was communicated to respondent No. 3 with its recommendation, by letter dated 15th November, 2000. The Management, in its discretion, decided to relieve the petitioner from 31st January, 2001. The effective date of retirement, therefore, according to the learned Advocate General, would be 4th January, 2001 i.e. the expiry of the period of three months' notice, effective from 4.10.2000. The services of the petitioner were continued and was relieved on 31st January, 2001 and this was in accordance with the Office Memorandum which permitted the relieving of the teaching staff as well as the non-teaching beyond the period of 90 days in order to ensure that no hardship was caused to the students on account of the retirement of the employee in the midst session. However, the fact that, as submitted by the learned Advocate General, the petitioner was relieved on 31st January, 2001, would not mean that the petitioner could withdraw his application for voluntary retirement upto 31st January,

2001. Mr. S.S. Kantak, learned Counsel appearing on behalf of respondent No.3 has adopted the submissions advanced by the learned Advocate General and has urged that the retirement became effective as soon as the notice period ended and, therefore, the effective date of retirement of the petitioner would be 4.1.2001 and not 31.1.2001.

13. The crucial question which arises for determination in the present petition is whether the effective date for retirement was 31.1.2001? Mr. S.D. Lotlikar, learned Senior Counsel appearing for the petitioner has placed strong reliance on the Judgment of the Supreme Court in ***Shambhu Murari Sinha vs. Project and Development India and another (supra)***. Relying on this Judgment of the Supreme Court, it is urged before us that the facts in the present petition are identical to the facts in the reported Judgment. In the present petition, the petitioner by his notice dated 4.10.2000, had offered to retire w.e.f. 4.1.2001, i.e. after giving a notice of three months. The petitioner was allowed to continue in his service and, was, in fact, relieved on 31.1.2001. The communication sent by respondent No.3 to the petitioner informing him that his application for VRS had been accepted by the Management is dated 13.1.2001. Thus, according to the learned Counsel for the petitioner, the effective date of retirement of the petitioner would be 31.1.2001, on which date he was actually relieved. In ***Shambhu Murari Sinha vs. Project and Development India and another (supra),*** the appellant therein, by his letter dated 18.10.1995 had exercised his

option of voluntary retirement, which was accepted by the Management by letter dated 30.7.1997. The appellant, however, was not relieved from service till 26.9.1997 and, therefore, the Supreme Court said that the date 26.9.1997 would be the effective date as he was relieved from service on that date. The appellant therein had, by his letter, dated 7.8.1997 withdrawn the offer of voluntary retirement.

14. In the present case, the petitioner by the notice dated 4.10.2001 had exercised his option of voluntary retirement which was to take effect on 4.1.2001. The directorate of Education had approved of the voluntary retirement of the petitioner and had accordingly, communicated the said fact to the Management and had recommended that in order to avoid any hardship being caused to the student, the petitioner be continued in service till the end of the academic year. Thus, the effective date of retirement was 4.1.2001, on which date, the petitioner would be retired.

15. We have already referred to the Office Memorandum which clarified that the non-teaching and the teaching staff be allowed to continue till end of the academic year to avoid any inconvenience and hardship to the students. In that background, therefore, the Management by its letter dated 13.1.2001 informed the petitioner that his application for VRS had been accepted by the Management and he would be relieved w.e.f. 31.1.2001. This was, obviously, done with an

intention to avoid causing any hardship and inconvenience to the students, which would otherwise have resulted on the retirement of the petitioner in mid session. Merely because the petitioner was allowed to continue in employment till 31.1.2001, it cannot be held that the effective date of retirement was 31.1.2001. Moment the application of the petitioner was accepted by the management and moment it was communicated to the petitioner by the letter of respondent No.3, dated 13.1.2001, the petitioner could not withdraw his offer of retirement and the effective date, which as per the notice period was 4.1.2001, would not stand extended merely because the petitioner was allowed to continue in service beyond the effective date. Therefore, according to us, the ratio of ***Shambhu Murari Sinha vs. Project and Development India and another (supra),*** would not apply to the facts of the present case. The petitioner had submitted his withdrawal of option of the voluntary retirement after his retirement became effective. Though he was relieved on 31.1.2001, it was done in the best interest of the students and by no stretch of imagination can it be said that the date 31.1.2001 was the effective date of retirement.

16. In view of what has been held by us above, according to us, the petitioner is not entitled to the reliefs which the petitioner has prayed for in the petition. The petition is, thus, devoid of any merit and deserves to be dismissed.

17. Accordingly, Writ Petition No. 28/2001 is dismissed. Rule discharged with no oder as to costs.

P.V. HARDAS, J.

N.A. BRITTO. J.

ssm .